

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL GREENFIELD and DEPARTMENT OF THE AIR FORCE,
ANDREWS AIR FORCE BASE, Camp Springs, MD

*Docket No. 00-1965; Submitted on the Record;
Issued June 14, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

In a prior appeal,¹ the Board affirmed the October 31, 1997, April 21 and May 21, 1998 decisions of the Office on the grounds that the Office properly terminated appellant's compensation effective October 31, 1997 and properly denied his request for merit review.² The facts and circumstances of the case up to that point are set forth in the Board's prior decisions and are incorporated herein by reference.³

By letter dated October 5, 1999, appellant requested reconsideration of his claim. By decision dated October 6, 1999, the Office denied appellant's request for merit review.

The Board finds that the Office acted within its discretion in refusing to reopen appellant's claim for further consideration of the merits.

¹ Docket No. 98-2105 (March 5, 1999).

² On December 12, 1996 appellant, then a 38-year-old tractor operator, sustained employment-related left knee and lumbar strains when he slipped on a concrete floor. By decision dated October 31, 1997, the Office terminated appellant's compensation effective October 31, 1997 based on the opinion of Dr. Louis Levitt, a Board-certified orthopedic surgeon who served as an Office referral physician. The Office later determined that there was a conflict in the medical evidence and referred appellant for an impartial medical examination to Dr. John B. Cohen, a Board-certified orthopedic surgeon. By decision dated April 21, 1998, the Office affirmed its October 31, 1997 decision and, by decision dated May 21, 1998, it denied appellant's request for merit review.

³ By decision dated August 23, 1999, the Board denied appellant's petition for reconsideration of its March 5, 1999 decision. By decision dated May 23, 2000, the Board dismissed another appeal on the grounds that appellant's application for appeal did not identify a final decision of the Office within the Board's jurisdiction.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,⁴ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) submit relevant and pertinent new evidence not previously considered by the Office.⁵ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his application for review within one year of the date of that decision.⁶ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁷

In support of his reconsideration request, appellant submitted medical and physical therapy reports which detailed the continuing treatment of his left knee and low back. The physical therapy reports do not constitute medical evidence⁸ and therefore are not relevant to the issue in this case, whether the medical evidence shows that appellant had disability after October 31, 1997 due to his December 12, 1996 employment injury. The medical reports do not contain any clear opinion that appellant continued to have employment-related disability after October 31, 1997 and therefore are also not relevant to the issue. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.⁹ Appellant also submitted copies of medical and physical therapy reports which had already been considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁰

In this case, appellant has not established that the Office abused its discretion in its October 6, 1999 decision by denying his request for a review on the merits of its prior decisions under section 8128(a) of the Act, because he did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office.

⁴ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

⁵ 20 C.F.R. § 10.606(b)(2).

⁶ 20 C.F.R. § 10.607(a).

⁷ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁸ *See Arnold A. Alley*, 44 ECAB 912, 920-21 (1993).

⁹ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

¹⁰ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

The October 6, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
June 14, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member